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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB54

October 28, 2025

VIA EMAIL

Donald Burdick
dtburdick@gmail.com

RE: FOIA Petition Regarding the Delaware Department of Natural Resources and Environmental Control

Dear Mr. Burdick:

We write regarding your correspondence alleging that the Delaware Department of Natural Resources and Environmental Control (“DNREC”) violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 (“FOIA”). We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 regarding whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we find that DNREC did not violate FOIA by asserting that emails received by the members or staff of the General Assembly may be withheld under Section 10002(o)(16).

BACKGROUND

You submitted a records request to DNREC for “copies of the legislator notifications required by 7 *Del. C.* § 6014(b) in connection with the December 27, 2018 ‘Notification of Non-Compliance’ issued to Sussex County Administrator Todd Lawson and the Sussex County Council regarding the Inland Bays Regional Wastewater Facility.”¹ The request sought notifications since 2010 sent to the State Representative and Senator in whose district the event occurred and any system-generated records showing when and to whom the notifications were sent, and any internal DNREC correspondence or transmittal memos attaching or referencing

¹ Petition.

these notifications. The request further sought “[if] DNREC determined that the December 27, 2018 Non-Compliance constituted (or did not constitute) an ‘environmental release’ for purposes of § 6014(b), any record reflecting that determination.”² DNREC denied the request pursuant to 29 Del. C. § 10002(o)(16), which exempts emails received or sent by members of the General Assembly or their staff. This Petition followed.

In the Petition, you argue that DNREC’s response was improper because Section 10002(o)(16) only shields emails sent *by* members of the General Assembly, not emails sent *to* members, and you are seeking emails that were sent to the General Assembly from DNREC. You contend that these emails are DNREC records and should be produced.

DISCUSSION

Delaware’s FOIA law “was enacted to ensure governmental accountability by providing Delaware’s citizens access to open meetings and meeting records of governmental or public bodies, as well as access to the public records of those entities.”³ FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.⁴ The public body has the burden of proof to justify its denial of access to records.⁵

This Petition challenges DNREC’s withholding of emails sent to members of the General Assembly or staff. Section 10002(o)(16) applies to “[e]mails received or sent by members of the Delaware General Assembly or their staff.” In *Flowers v. Office of the Governor*, the Superior Court of Delaware determined that the language of this exemption is unambiguous and must be interpreted according to its plain meaning.⁶ The Court rejected the appellant’s argument that an email could not be withheld “*solely* on the basis that the sender or a recipient is a member of the General Assembly or its staff.”⁷ Rather, the Court clarified that the exemption did not have a “content or context” requirement which would require the Court to examine the substance of the email; the exemption applies when the email was received or sent by a member of the General Assembly.⁸ As any emails received by the General Assembly members or their staff are exempt, we find no violation, as alleged in the Petition.

² Petition.

³ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

⁴ 29 Del. C. § 10003(a).

⁵ 29 Del. C. § 10005(c).

⁶ 167 A.3d 530, 544 (Del. Super. 2017).

⁷ *Id.*

⁸ *Id.*

CONCLUSION

For the foregoing reasons, we conclude that DNREC did not violate FOIA by asserting that emails received by the members or staff of the General Assembly may be withheld under Section 10002(o)(16).

Very truly yours,



Daniel Logan
Chief Deputy Attorney General

cc: Matthew Lintner, Deputy Attorney General
Dorey Cole, Deputy Attorney General